

June 3, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wildlife Research Center, Inc.

Serial No. 76346127

Gerald E. Helget of Briggs & Morgan for Wildlife Research Center, Inc.

Amy Gearin, Trademark Examining Attorney, Law Office 115
(Tomas Vlcek, Managing Attorney).

Before Hanak, Hairston and Bucher, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Wildlife Research Center, Inc. seeks to register in typed drawing form ODORLESS FORMULA for "hunters' scent camouflage and neutralizer." The application was filed on December 6, 2001 with a claimed first use date of May 1, 1995.

As stated by the Examining Attorney at page 2 of her brief, the issue to be decided is as follows: "Applicant has appealed the final refusal to register the proposed designation ODORLESS FORMULA on the Principal Register, under Section 2(e)(1) of the Trademark Act, as amended, on

the grounds that the designation is merely descriptive of the claimed goods, and because applicant's claim of acquired distinctiveness under Section 2(f) of the Act is insufficient." When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Moreover, a mark need only describe one significant quality or characteristic of the relevant goods or services in order to be held merely descriptive. In re Gyulay, 3 USPQ2d at 1010. In addition, the more descriptive a mark is, the more evidence that the applicant must submit in order to establish that its mark has acquired distinctiveness pursuant to Section 2(f) of the Trademark Act. Yamaha International Corp. v. Hoshino Gakki Co., 840 F.2d 572, 6 USPQ2d 1001, 1008 (Fed. Cir. 1988).

Considering first whether the designation "odorless formula" is descriptive of applicant's goods (hunters'

scent camouflage and neutralizer), it clearly is.

Applicant's own specimen of use depicts its true trademark SCENT KILLER in bold capital letters with the ® symbol.

This specimen (label) then goes on to tout some of the benefits of applicant's SCENT KILLER® as follows: "kills human scent on contact" and "special totally odorless formula." Moreover, applicant's specimen (label) contains the following statement: "Scent Killer® is totally odorless when you first put it on and keeps you odorless all day long."

In addition, the Examining Attorney has made of record a massive amount of evidence demonstrating that the term "odorless formula" is used in connection with a wide array of products to indicate that said products lack an odor. Among the many products set forth in the Examining Attorney's evidence include the following: floor coatings, condoms, cosmetic products, glues, tick repellants, contact lens cleansers, a product that removes dust and grime from all types of artificial plants, hair care products, masonry paints, and the list goes on and on. Indeed, the Examining Attorney has established that one product which is legally identical to applicant's product uses the highly descriptive term "odorless formula" to describe its archery deodorizers which "contain powerful bacteriostats that

fight scent-causing bacteria [on humans] for a long time." Obviously, applicant's identification of goods reads simply "hunters' scent camouflage and neutralizer." Thus, applicant's identification of goods is broad enough to include both gun and archery hunters.

Given the extremely highly descriptive nature of applicant's "mark" as applied to applicant's goods, a massive showing of acquired distinctiveness pursuant to Section 2(f) would be required before applicant could register its mark. Yamaha International Corp., 6 USPQ2d at 1008. In this regard, the only evidence that applicant has made to show that its mark has acquired distinctiveness is the fact that applicant has used its mark continuously for nine years, that is to say, from May 1, 1995. Given the extremely highly descriptive nature of applicant's mark, said evidence is woefully inadequate to establish that applicant's mark has acquired distinctiveness pursuant to Section 2(f) and thus is entitled to registration.

Decision: The refusal to register is affirmed.